IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10925 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREYAS EDUCATION TRUST - Petitioner(s)
Versus
VEER NARMAD SOUTH GUJARAT UNIVERSITY & 2 - Respondent(s)

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Appearance :
MR KIRIT I PATEL for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR DC DAVE for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
MR JB PARDIWALA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 15/11/2006

ORAL JUDGMENT

1. Rule. The learned advocates appearing for respective respondents are directed to waive service. The matter is taken up for final hearing and disposal today considering the narrow scope of the controversy between the parties.

2. The petitioner herein is a charitable trust running educational institute, more particularly H.H.Patel College of Education (B.Ed.) for women at Surat. It is the say of the petitioner that the National Council for Teacher Education (NCTE) granted recognition pursuant to which the petitioner moved respondent No.3- University (SNDT) for affiliation. SNDT University, therefore, called upon the petitioner to obtain No Objection Certificate (NOC) from respondent No.1-University within whose territorial jurisdiction the petitioner College was situated. On 25.11.2005, respondent No.1-University refused the NOC by virtue of resolution dated 26.10.2005 whereunder it was resolved that as the application of the petitioner did not contain reasons why the petitioner wanted to affiliate itself with SNDT University despite

respondent No.1-University being ready and willing to grant affiliation, the request made for issuance of NOC be rejected. It appears that pursuant thereto respondent No.1-University issued certain public clarification / notice in the local press in relation to the petitioner sometime in April, 2006 to the effect that respondent No.1-University was contemplating criminal action against the petitioner for running a College without having obtained NOC from respondent No.1-University. It is at this stage, that the petitioner has come before the Court.

3. Heard Mr.K.I.Patel, learned advocate for the petitioner, Mr.D.C.Dave, appearing for respondent No.1, learned AGP Ms.Rawal for respondent No.2 and Mr.Joshi with Mr.J.B.Pardiwala for respondent No.3.

4. Mr.D.C.Dave has vehemently opposed the petition on various grounds stated in the affidavit in reply filed on behalf of respondent No.1-University. However, the principle ground of attack has been the jurisdiction and the powers of respondent No.1-University by virtue of Section 5(1) of the South Gujarat University Act, 1965 (The Act). It was submitted that there was a negative mandate in the said provision which

stated that no educational institution within the university area shall be associated in any way with, or seek admission to any privileges of any other university, save with the sanction of the State Government and the University. Thus, according to Mr.Dave, the said section prohibited educational institutions situate and operating within the university area, namely, area specified in the schedule, from associating themselves with any other University except respondent No.1-University. It was submitted that once respondent No.1-University had accepted that it was ready and willing to grant affiliation, the petitioner cannot be heard to state that it will opt to obtain affiliation with any other university. That in fact, no reasons are advanced for seeking affiliation with SNDT University. In the circumstances, according to Mr.Dave the petition was required to be rejected.

5. An incidental submission was made on the availability of jurisdiction to SNDT University. The contention was that the said university could only operate in the State of Maharashtra by virtue of provisions of S.N.D.T. Women's University Act, 1974 with special reference to Section 5 and Section 105 of the said Act. According to him, the entire basis on which the petition has been filed is contrary to provisions

of Section 5 of the Act. That the aforesaid contention is over and above, the grounds relating to delay, the petitioner not being entitled to invoke equitable jurisdiction considering the conduct of the petitioner, absence of any reasons for seeking affiliation from SNDT University.

6. Section 5 of the Act reads as under:-

> *5. Jurisdiction and admission privileges -(1) No educational institution within University Area shall, save with the sanction of the State Government and the University, be associated in any way with or seek admission to any privileges of, any other University established by law.*

7. On a plain reading of the provision, it is apparent that though the provision is couched in negative terms an exception is carved out whereunder educational institution is entitled to obtain association or affiliation with any other university with the sanction of the State Government and the University. In light of the facts which have been come on record , it is not necessary to enter into any further discussion on merits or de-merits of other legal issues considering the

fact that vide communication dated 06.05.2006 (Annexure-Z) the State Government has informed respondent No.1-University that in light of the Judgment rendered by this Court in Special Civil Application No.15598 of 2005 and cognate matters delivered on 16.08.2005 in case of B.Ed. Colleges, which has been granted approval and recognition by NCTE-Bhopal, the State Government shall grant recognition / NOC. Respondent No.1-University has thereafter been directed in the said communication to complete the exercise of granting NOC and inform the Education Department so as to ensure that there is no contempt committed by the University or the State Government vis-a-vis Judgment of the High Court.

8. Therefore, in the circumstances, even if one proceeds on the footing that provisions of Section 5 of the Act are applicable the State Government having acted in consonance with the said provisions and granted NOC in general terms to all B.Ed. Colleges which have been granted recognition by NCTE-Bhopal, respondent No.-1- University, cannot be heard to contend otherwise. During the course of hearing, Mr.Dave had contended that such NOC was required from both the State Government and the University considering the use of the term “and” appearing between the

words “State Government” and “the University”. At first blush the contention appears to be attractive. However, the same does not stand on closer scrutiny.

9. Once the State Government has come to the conclusion that even in exercise of powers available under Section 5 of Act an educational institution is entitled to NOC, meaning thereby, that such educational institution must be allowed affiliation with any other university established by law the concerned University cannot take a contrary stand bearing in mind that the NOC is in relation to the educational institution situated within the same University area and such NOC is not qua some other university area.

10. In the circumstances, on this limited count, the petitioner is bound to succeed. In so far as contention regarding non-availability of jurisdiction with SNDT University is concerned, suffice it to state that in the affidavit in reply filed by the said university, it has categorically placed reliance on provisions of Section 105 of the said statute by which SNDT University is governed to submit that it is open to SNDT University to grant affiliation, subject to permission from the

concerned Government. As recorded hereinbefore, in the facts of the present case, the State Government having granted the NOC nothing further is required to be done in so far as SNDT University is concerned and therefore, the challenge raised by respondent No.1 on this count also fails

11. In the circumstances, for the reasons stated hereinbefore, the petition is allowed. Respondent No.1-University is directed to grant NOC to the petitioner within a period of fortnight from today. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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